

Summary:

AWARE’s Recommendations for Proposed Amendments to the Employment Act

| s/n | MOM’s proposed areas for review for Phase 1 | AWARE’s recommendations | |
|----------|--|-------------------------|---|
| A | Extending coverage of the Employment Act | | |
| | To cover more employees, particularly on provisions relating to hours of work, rest days and annual leave | 1 | The Employment Act (EA) and all related employment legislation must cover all workers and employees in Singapore regardless of position and salary earned. The exclusion of “managers and executives” and “domestic workers” from the Act should be abolished. The existing distinction between “employees” and “workmen” should also be removed |
| | To extend more protection to professionals, managers & executives (PMEs) | 2 | Provision should be made to extend job protection for pregnant workers from the start of pregnancy regardless of marital status. |
| | | 3 | Provision should be made to guarantee zero tolerance for workplace sexual harassment |
| | | 4 | Provision should be made to ensure that when a worker takes a relatively long period of leave due to physical conditions (e.g. pregnancy, illness, recovery from accident), he/she cannot be fired within the first 3 months of returning back to work. |
| C | Reducing rigidity and augmenting flexibility for Employers | | |
| | To balance rights and responsibilities by giving employers greater flexibilities in view of possible increased protection for PMEs | 5 | Provision should be made to allow employees the right to request for flexible working hours in order to care for children. Employers can decide to agree or disagree. If it is the latter, the employer should provide reasonable justification (i.e. a strong business reason) for the decision. In addition taking into account our aging society, all employees should be given two additional days leave to enable them to attend to their parents’ health needs, as per the practice in the civil service. |

AWARE's Recommendations for Proposed Amendments to the Employment Act¹

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General feedback/ comments on the proposed amendments to the Employment Act (EA):

AWARE appreciates the opportunity to provide feedback to the Ministry of Manpower as part of public consultation on the proposed areas being considered in Phase 1 of the EA Review. We applaud the Ministry's efforts to include more workers under the law and to give better protection to professionals, managers and executives. We commend the Ministry on these proposed changes:

- To better safeguard employees' salaries against unauthorised deductions
- To minimise disputes and raise awareness of an employee's salary entitlement
- To review the non-entitlement period for retrenchment benefits
- To review an employers' non-liability in situations of cosmetic consultations and procedures.

To address other problems with the existing legislation, AWARE recommends the following.

Primarily, AWARE suggests that greater protection must be given to pregnant employees, regardless of their marital status. Current maternity legislation is covered under Part IX of the EA and also under Part III of the Child Development Co-Savings Act. Both Acts provide a system of maternity rules and regulations to which employers and employees are required to adhere. This in and of itself creates confusion for individuals ascertaining the benefits which apply to them. Furthermore, each Act covers different "types" of employees, resulting in different set of maternity rules and regulations for each "type". This has resulted in many "types" of employees being ineligible for any maternity leave, paid or unpaid.

AWARE respectfully suggests that in extending coverage of the employment legislation, MOM should take into account the protection of all workers, including foreign domestic workers. This is aligned with comments given by the UN Committee on CEDAW (Convention on the Elimination of All forms of Discrimination Against Women) which encouraged the State to 'review and amend the existing labour legislation so that it applies to foreign domestic workers, or adopt new legislation ensuring that foreign domestic workers are entitled to adequate wages, decent working conditions, benefits and access to complaint and redress mechanisms'.²

¹ In accordance with template for public consultation

² Concluding comments from UN CEDAW Committee 2007
http://www.bayefsky.com/pdf/singapore_t4_cedaw_39.pdf

Feedback relating to specific issues/ topics

| s/n | Issue / Topic: MOM's proposed areas for review for Phase 1 | Feedback / Suggestions | |
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| A | Extending coverage of the Employment Act | | |
| | <p>To cover more employees, particularly on provisions relating to hours of work, rest days and annual leave</p> <p>Specific proposal:</p> <ul style="list-style-type: none"> • Adjust salary threshold of non-workmen in line with salary increase • Review the need to adjust salary threshold for workmen | 1 | <p>AWARE suggests that the EA covers all workers, regardless of position and salary earned.</p> <p>In our experience of providing support for female employees who feel they have been discriminated against or unfairly treated by their employers, we have found that the term “managerial and executive positions” is ambiguous and “executive positions” confuses both employers and employees, giving rise to uncertainty as to whether a person is covered under the EA.</p> <p>Workers should not have to consult a lawyer to determine if they are covered by the EA. This confusion is compounded by the fact that employers use the terms “executive” and “manager” indiscriminately, possibly to avoid application of the EA.</p> <p>There is no reason to deny “persons employed in “managerial and executive positions” from the basic minimum protection of the law. MOM reports that PMETs constitute more than 50% of the resident workforce.³ Exclusion of these workers from the EA means that a majority of the workforce is unable to safeguard their employment rights.</p> <p>Furthermore, the distinction between “workmen” and “employees” is unnecessary and again complicates matters. Many jobs are not exclusively “manual” or “non-manual” and many people do both.</p> <p>The EA should apply to every single worker in Singapore and should be simple enough to be understood by laypersons. The technical distinctions that currently exist in the EA should be removed.</p> <p>It is also not clear why civil servants and those employed by statutory boards are expressly excluded from the application of</p> |

³ Ministry of Manpower, 'Report on Labour Force in Singapore 2011', http://www.mom.gov.sg/Documents/statistics-publications/manpower-supply/report-labour-2011/mrsd_2011LabourForce.pdf

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| | | | <p>the EA. The EA provides minimum protection and should be applicable to all, including those working for the public sector.</p> <p>Finally, the EA should provide protection to workers who are the most vulnerable in Singapore, i.e. domestic workers working in private homes, currently excluded from the EA.</p> <p>It may be necessary to provide alternative provisions in the Act for this category of workers to take into account their working arrangements. However, these workers should be covered under the EA which should impose limits on working hours and provisions on medical leave, annual leave and a more effective mandatory day-off policy.</p> <p>The Ministry has recently clarified that it is neither “pro-employer” nor “pro-worker”.⁴ But this is not so in the current legislative regime, as it excludes a large proportion of workers, including those who are most vulnerable.</p> |
| | <p>To extend more protection to professionals, managers & executives (PMEs)</p> <p>Specific proposal:</p> <ul style="list-style-type: none"> • Extend appropriate additional protection beyond salary protection to professional, managerial and executive employees | 2 | <p>Protection for Pregnant Workers</p> <p>AWARE urges the Government to provide greater protection for pregnant workers and mothers in general – regardless of their marital status - to address the following gaps and weaknesses:</p> <ol style="list-style-type: none"> a) Single mothers who are employed in “managerial and executive positions” are not entitled to any paid maternity leave under the EA. This gap will be addressed if the EA is extended to all employees. b) Provision should be made to extend job protection for pregnant workers from the start of pregnancy regardless of marital status. Job protection currently only applies after the first three months of pregnancy, yet an employee is obliged to tell her employer of her pregnancy as soon as practicable. This places pregnant employees at a disadvantage. Abuses do happen in the first three months of pregnancy. AWARE’s help has been sought by distressed pregnant women whose employers dismissed them a day before the maternity provisions for job protection commenced. <p>We urge that the three month threshold be removed. A</p> |

⁴ Siong, 2012

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| | | <p>good example to follow is Hong Kong, where an employer is barred from terminating the employment of an employee who has given notice of her pregnancy. If a pregnant employee is dismissed by her employer before she has informed them of her pregnancy, she may still serve them notice of her pregnancy thereafter. Under such circumstances, her employer must withdraw the dismissal or the notice of dismissal.⁵</p> <p>c) There is no job protection after the mother returns from maternity leave. AWARE has supported a case where an employee returned to work from her maternity leave to find a letter of termination on her desk. The EA currently does not protect against this so long as the employer gives the employee the requisite notice of termination. AWARE strongly recommends that there should be a prohibition against any termination during an employee's pregnancy, maternity leave as well as 3 months after returning to work from her maternity leave.</p> <p>d) In cases where notice of dismissal was given to a pregnant worker without sufficient cause, the EA should make clear that an employee who has been unlawfully dismissed will be adequately compensated for her loss of income and benefits. In a case supported by AWARE, a pregnant employee, who had been unlawfully terminated before the end of her first trimester and who sought MOM's assistance, was informed by MOM officers at the mediation of her case that she should accept the 4 month compensation that her employer was offering to settle the dispute. The MOM officers said that in their experience, the Minister of Manpower was unlikely to order more than 4 months compensation for her unlawful dismissal. Given this advice, the aggrieved employee accepted the offer even though she was not satisfied with the offer. Employees in this position are effectively out of the workforce for as long as a year, as they are unlikely to find a job during the period of her pregnancy and 4 months thereafter.</p> |

⁵ Labour Department, The Government of the Hong Kong Special Administrative Region, 'Frequently asked questions about The Employment Ordinance, Cap.57 Maternity Leave', http://www.labour.gov.hk/eng/faq/cap57h_whole.htm#q5

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| | | | <p>e) Unlike in Malaysia, Hong Kong, Korea, Australia and the United Kingdom, employers in Singapore are not obliged to carry out risk assessment to identify workplace changes needed to protect the health of the employee and her baby. Where such risks have been identified, the employer is obliged to take steps to remove the risks. The EA should be amended to provide for this.</p> |
| | | 3 | <p>Zero tolerance for Workplace Sexual Harassment</p> <p>AWARE calls for the EA to be amended to provide the following:</p> <ul style="list-style-type: none"> a) Explicit legal protection against sexual harassment b) Imposes affirmative duties for employers to take steps to prevent sexual harassment c) Establish or empower an administrative body to handle complaints and promote application of the law, in partnership with the Ministry of Manpower. d) A wide range of civil remedies and sanctions. <p>Please refer to AWARE's Reports on Workplace Sexual Harassment (2008 and 2012),⁶ which set out the seriousness of this problem, inadequacies in present laws and practices, as well as recommendations for amendments.</p> |
| | | 4 | <p>Protection Against Dismissal after Long Term Leave for Maternity or Health Reasons</p> <p>The EA should provide protection from dismissal for confirmed employees who are on long-term leave for maternity or health reasons.</p> <ul style="list-style-type: none"> a) If an employee has to go on long term-leave due to physical conditions (i.e. maternity, illness or surgery) the employer should not be allowed to dismiss the employee within the first 3 months of their return to work. The employee should be entitled to return to the same job or one of equivalent status, job scope, or pay. |

⁶ AWARE 2008 & 2012, Research study on Workplace Sexual Harassment

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| | | | <p>b) Prior to going on long term-leave, AWARE also recommends that the employer provides options for the employee to be kept informed of relevant information relating to their job (e.g. organisational change) or to be kept updated with developments in their team and department. However, an employee is entitled to decline any options provided, and should not suffer any detriment.</p> |
| C | Reducing rigidity and augmenting flexibility for Employers | | |
| | <p>To balance rights and responsibilities by giving employers greater flexibilities in view of possible increased protection for PMEs</p> <p>Specific proposal:</p> <ul style="list-style-type: none"> • Introducing a qualifying period for dismissal with notice provisions for PMEs • Give employers the flexibility to provide time-off-in-lieu for work done on Public Holidays by PMEs | 5 | <p>The Right to Ask for Flexible Work Arrangements</p> <p>Despite the Government's push for flexible work arrangements, including funding assistance schemes for companies, flexible work arrangements have not taken off among employers.</p> <p>AWARE recommends that the EA be amended to give confirmed male and female employees, regardless of their marital status, who have children, the right to request for flexi-time to care for their child. The employer is obliged to give the request serious consideration and must have a good business reason for declining any such request. AWARE also recommends that such arrangements be piloted for a year, subjected to review thereafter.</p> <p>This is already practised in countries such as UK and South Korea. In the UK, an employee has the statutory right to request for flexible working arrangements if they have a child under the age of 16 or a child with a disability under the age of 18. The employer has a statutory duty to consider the request seriously and to refuse it only if there are clear business grounds for doing so. An employee is also allowed 'reasonable time off' to deal with an emergency⁷ In South Korea, employers have a duty to take measures to support those who care for pre-school children by considering flexible working hours and restriction of overtime.⁸</p> |

⁷ Gov.UK 'Employee rights when on leave', <https://www.gov.uk/employee-rights-when-on-leave>

⁸ 'Act on equal employment and support for work-family reconciliation', <http://www.ilo.org/dyn/travail/docs/1751/Act%20on%20Equal%20Employment%20and%20Support%20for%20Work-Family.pdf>

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| | | Additionally, AWARE also recommends that in view of our aging society and taking a cue from the civil service, all employees be given two days parent-care leave to enable them to take care of their parents' health needs. |

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